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2. In an action on a corporate stock subscription, conditioned on the corporation obtaining \$15,000 *bona fide* subscriptions, which it had not obtained, an instruction that, though defendant applied for a charter for the corporation, was named as one of the incorporators, participated in the proceedings and acted as a director, yet if at the time he did so he did not know that *bona fide* valid subscriptions to such amount had not been obtained, his acts would not constitute a waiver of the condition, was properly refused without a qualifying requirement that defendant did not intend by such acts to waive the condition.

3. Where defendant had knowledge of certain testimony before the trial which became material during the trial, when he caused a summons to be issued for the witness, and, on his being reported absent from the city for the day, defendant made no request to the court to delay the trial, the evidence of such witness was not newly discovered so as to justify a new trial.

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BISHOP v. BAGLEY et al.

June 15, 1905.

[51 S. E. 205.]

WATERS—ESTABLISHMENT OF DAM — REPORT OF COMMISSIONERS — SUFFICIENCY—CONCLUSIVENESS OF REPORT.

1. Where commissioners appointed in proceedings under Code 1887, sec. 1347 [Va. Code 1904, p. 753], to investigate and report on an application for the establishment of a mill and mill-dam on a certain stream, designated one of their number to write out the report and sign their names thereto, the subsequent acknowledgment in open court of the report, and their signatures by the commissioners who had not personally signed it, was a sufficient compliance with the law.

2. Under Va. Code 1904, p. 856, sec. 1353, concerning establishment of milldams, providing that if on the report of the commissioners, or on other evidence, it appears to the court that by granting such leave the health of the neighbors will be annoyed, the leave shall not be granted, the statement in the report of the commissioners that, if leave is granted, the health of the neighborhood will be annoyed by the stagnation of water caused by the pond, producing malaria, chills, and fever, is conclusive against the right of applicant to establish the dam.

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WEST v. CITY OF NEWPORT NEWS.

June 15, 1905.

[51 S. E. 206.]

MUNICIPAL CORPORATIONS—TAXES—ASSESSMENT—FOLLOWING STATE LIST—ORDINANCES—CONSTRUCTION—BANK STOCK—MARKET VALUE—COMMISSIONER OF REVENUE—CHARTER DUTIES.

1. Under the express provisions of Const. art. 8, sec. 128 [Code, p. ccxlii], and Code 1904, p. 495, sec. 1033h, a municipal assessment of

property in cities and towns where there is an assessment for state taxes must be the same as the state assessment.

2. A city ordinance imposing a tax on the "capital stock" of banks located within the city was not in violation of Acts 1902-04, sec. 17, p. 163, providing that no tax shall be assessed on the "capital" of any bank.

[Ed. Note.—For cases in point, see vol. 36, Cent. Dig. Municipal Corporations, secs. 2029, 2052; vol. 45, Cent. Dig. Taxation, secs. 637, 638.]

3. Bank stock being declared to be personal property by Code 1904, p. 608, sec. 1173a, subsec. 7, such stock was covered by a city ordinance imposing a tax on "all personal property of every description, including capital stock of banks located within the city," though the latter clause should be construed as referring to the "capital" of the bank.

[Ed. Note.—For cases in point, see vol. 36, Cent. Dig. Municipal Corporations, secs. 2029, 2052; vol. 45, Cent. Dig. Taxation, secs. 637, 638.]

4. Certain bank stock having been assessed at its market value for state taxes, an ordinance imposing a tax of 90 cents on every \$100 of the "assessed value" thereof was not objectionable on the ground that such assessment was not on the market value of the stock, the assessment having been made on the assessed valuation for state taxes, as required by Const. art. 8, sec. 128 [Code, p. cxliii]; and Code 1904, p. 495, sec. 1033h.

5. Newport News City Charter, sec. 86, providing that the commissioner of revenue shall perform all the duties in relation to the assessment of property for city taxes that may be ordered by the council, applies only where there is no state assessment of the property within the city which can be followed as provided by Const. art. 8, sec. 128 [Code, p. cxliii], and Code 1904, p. 495, sec. 1033h.

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#### CONTINENTAL CASUALTY CO. v. PELTIER.

June 15, 1905.

[51 S. E. 209.]

ACCIDENT INSURANCE—DEATH—PROXIMATE CAUSE—INSTRUCTIONS — CURING ERROR.

1. Where, in an action on an accident policy insuring against death from accident solely and independently of all other causes, it appeared that deceased died from typhoid fever after an accident, and that there was no necessary or natural causal connection between deceased's injuries and the disease, an instruction that if deceased was injured by accident, and as a direct result of such injuries, as an exciting cause, some disease was set up in his body, which would not have happened but for his injuries, and from which disease deceased died, the injuries would be the proximate cause of his death, and that where death results from any disease which is the direct cause of an injury, and which would not have happened but for the injury, such injury, in contemplation of law, is the cause of death, was erroneous, as misleading the jury to speculate as to whether deceased died from injuries or disease, or from both concurring.